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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

FILED

FEB 28 2011

DAVID CREWS, CLERK
BY [Signature] Deputy

DESOTO COUNTY, MISSISSIPPI BRANCH
OF THE NAACP and THOMAS PLUNKETT,
on behalf of themselves and all others similarly situated

PLAINTIFFS

VS.

CIVIL ACTION NO. 2:11-CV-040-A-5

DESOTO COUNTY, MISSISSIPPI BOARD OF SUPERVISORS;
DESOTO COUNTY, MISSISSIPPI DEMOCRATIC PARTY
EXECUTIVE COMMITTEE; DESOTO COUNTY, MISSISSIPPI
REPUBLICAN PARTY EXECUTIVE COMMITTEE; DESOTO
COUNTY, MISSISSIPPI BOARD OF ELECTION COMMISSIONERS;
and DALE THOMPSON, in her official capacity as Circuit Clerk

DEFENDANTS

**MOTION FOR A TEMPORARY RESTRAINING ORDER
AND A PRELIMINARY INJUNCTION**

COME NOW the plaintiffs, the Desoto County, Mississippi Branch of the NAACP ("National Association for the Advancement of Colored People"), and Thomas Plunkett, pursuant to the Equal Protection Clause of the 14th amendment to the United States Constitution, 42 U. S. C. § 1983, and 28 U. S. C. §§ 2201, and 2202, and move the Court to grant a temporary restraining order ("TRO") and/or a preliminary injunction enjoining the March 1, 2011 candidate qualification deadline and the present apportionment scheme for supervisor, justice court judge, and constable in Desoto County, Mississippi on the following grounds:

1. Plaintiff, the Desoto County, Mississippi Branch of the NAACP is a civil rights organization whose members are primarily African American citizens registered voters throughout Desoto County, Mississippi, including Supervisor Districts 1, 2, 3, 4, and 5.

2. Plaintiff, Thomas Plunkett, is a registered African-American voter in Supervisor

District 4 in Desoto County, Mississippi.

3. Defendant, the Desoto County, Mississippi Board of Supervisors, is a local governmental body of the State of Mississippi responsible for conducting primary, special, and general elections for the office of supervisor, constable, and justice court judge for Desoto County, Mississippi.

4. Defendant, the Desoto County, Mississippi Democratic Executive Committee (“DCDEC”), is a political party and quasi-governmental entity responsible for conducting primary elections for the Democratic Party in Desoto County, Mississippi.

5. Defendant, the Desoto County, Mississippi Republican Executive Committee (“DCREC”), is a political party and quasi-governmental entity responsible for conducting primary elections for the Republican Party in Desoto County, Mississippi.

6. Defendant, the Desoto County, Mississippi Board of Election Commissioners, is a local governmental body of the State of Mississippi responsible for conducting special and general elections for the office of supervisor, constable, and justice court judge for Desoto County, Mississippi.

7. Defendant, Dale Thompson, is a local governmental official and Circuit Clerk for Desoto County, Mississippi who, pursuant to § 23-15-299, Miss. Code Ann. (1972), is responsible for conducting elections for supervisor, justice court judge, and constable for Desoto County, Mississippi.

8. The population for Desoto County, Mississippi according to the 2010 federal decennial census is 161,252 persons of whom 35,266 (or 21.87%) are African-American. A copy of the U. S. Census Bureau’s 2010 Redistricting Data for Desoto County, Mississippi is attached

hereto as Exhibit "A" and incorporated herein.

9. Desoto County, Mississippi is governed by a five (5) member board of supervisors elected from single member districts.

10. Members of the Desoto County, Mississippi Board of Supervisors are elected by popular vote to four year terms of office.

11. The terms of office for current members of the Desoto County, Mississippi Board of Supervisors expire December 31, 2011.

12. Political party primary nomination elections for the next term of office for members of the Desoto County, Mississippi Board of Supervisors are scheduled for Tuesday, August 2, 2011.

13. The qualification deadline for candidates for supervisor is March 1, 2011.

14. A majority vote is required for political party nomination elections in Mississippi.

15. Political party second primary nomination or run-off elections for the next term of office for members of the Desoto County, Mississippi Board of Supervisors are scheduled for Tuesday, August 23, 2011 if no candidate receives a majority vote during the primary nomination election.

16. A general election and regular special elections are scheduled for Tuesday, November 8, 2011.

17. The ideal population for each supervisor district for Desoto County, Mississippi is 32,250 persons according to the 2010 federal decennial census.

18. The total population for each supervisor district, the black population for each supervisor district, and the percentage of black population for each supervisor district in Desoto County, Mississippi according to the 2010 federal decennial census is as follows:

<u>Supervisor District</u>	<u>Total Population</u>	<u>Black Population</u>	<u>Black Pop. %</u>
1	44,651	10,331	23.14%
2	30,691	5,814	18.94%
3	27,008	8,614	31.89%
4	20,393	4,225	20.72%
5	38,509	6,282	16.31%

19. The supervisor districts for Desoto County, Mississippi have a total population deviation of 24,258 persons according to the 2010 federal decennial census with a maximum deviation percentage of 75.22%.

20. The Desoto County, Mississippi Branch of the NAACP, is a civil rights organization whose members include and which represents citizens and registered voters Supervisor Districts 1 and 5 which are overpopulated and under represented, and the plaintiff is aggrieved by that under representation.

21. Plaintiff, Thomas Plunkett, is a citizen and voter in Supervisor District 4, which has a substantial black population, and plaintiff, Thomas Plunkett, does not want the black voting strength in Desoto County, Mississippi diluted.

22. Desoto County, Mississippi is a jurisdiction covered by the preclearance requirements of § 5 of the Voting Rights Act of 1975, as amended and extended, 42 U. S. C. § 1973c, that has a long and official history of racial discrimination against African-American citizens and voters that has affected their right to register, vote, and participate in the political process.

23. The defendants are not likely to redistrict supervisor districts, justice court districts, and constable districts and obtain preclearance of new redistricting plans before the candidate

qualification deadline.

24. Plaintiffs are aggrieved by the malapportioned supervisor districts, and they continue to suffer the dilution of their vote until the supervisor districts are redrawn and preclearance obtained.

See, Declaration of Thomas Plunkett, attached as Exhibit "1."

25. Supervisors must "make an honest and good faith effort to construct districts...as nearly of equal population as is practicable..." *Brown v. Thomson*, 462 U. S. 835, 103 S. Ct. 2690, at 2695, 77 L. Ed. 2d 214 (1983), quoting, *Reynolds v. Sims*, 377 U. S. 568, at 577, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964). Generally, a legislative apportionment plan must have "a maximum population deviation under 10%" to pass constitutional muster. *Brown v. Thomson*, supra, 103 S. Ct. at 2696, citing, *Connor v. Finch*, 431 U. S. 407, at 418, 97 S. Ct. 1828, at 1835, 52 L. Ed. 2d 465 (1977); *White v. Regester*, 412 U. S. 755, at 764, 93 S. Ct. 2332, at 2338, 37 L. Ed. 2d 314 (1975). The one-person one-vote principle of the Equal Protection Clause applies to supervisor districts as well as other type of legislative districts. See, *Kirksey v. Board of Supervisors of Hinds County*, 554 F. 2d 139 (5th Cir.) (en banc), cert. denied, 434 U. S. 968, 98 S. Ct. 512, 54 L. Ed. 2d 954 (1977); *Abate v. Mundt*, 403 U. S. 182, 91 S. Ct. 1904, 29 L. Ed. 2d 399 (1971); *Hadley v. Junior College Dist.*, 397 U. S. 50, 90 S. Ct. 791, 25 L. Ed. 2d (1970); *Avery v. Midland County*, 390 U. S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968); *Cook v. Luckett*, 575 F. Supp. 479 (S. D. Miss. 1983), declined to follow, *Chisom v. Roemer*, 853 F. 2d 1186 (5th Cir. 1988). The 10% maximum population deviation principle applies to supervisor districts as well. *Cook v. Luckett*, supra.

26. Since the supervisor districts have a maximum population deviation of 75.22%, the districts are unconstitutionally malapportioned and plaintiffs are entitled to affirmative relief. *Kirksey v. Board of Supervisors of Hinds County*, supra; *Cook v. Luckett*, supra.

27. The voting injury to the plaintiffs is substantial. See, *Reynolds v. Sims*, supra; *Kirksey v. Board of Supervisors of Hinds County*, supra; *Cook v. Luckett*, supra. The equities of granting injunctive relief weigh in plaintiffs' favor. See, *Cook v. Luckett*, supra.

28.. Plaintiffs have sought pre-election relief. Generally, a plaintiff is entitled to injunctive relief if there is a constitutional one-person one-vote or voting rights violation and the plaintiff seeks pre-election relief. See, generally, *Hadnot v. Amos*, supra; *Hamer v. Campbell*, 358 F. 2d 215 (5th Cir. 1966); *Toney v. White*, 488 F. 2d 310 (5th Cir. 1973); *Rodriguez v. Bexar County, Texas*, 385 F. 3d 853, at 859 fn. 2 (5th Cir. 2004); *Tucker v. Buford*, 603 F. Supp. 276 (N. D. Miss. 1985); *Fairley v. Forrest County, Mississippi*, 814 F. Supp. 1327 (S. D. Miss. 1993); *Watkins v. Mabus*, 771 F. Supp. 789 (S. D. Miss. 1991) (three-judge court), *vacated, in part*, 502 U. S. 954, 112. S. Ct. 412, 116 L. Ed. 2d 433 (1991).

29. Plaintiffs request the Court to: (1) enjoin elections under the existing malapportioned scheme; (2) enjoin the present candidate qualification deadline for the office of supervisor, justice court judge, and constable in Desoto County, Mississippi; (3) extend the candidate qualification deadline for the office of supervisor, justice court judge, and constable in Desoto County, Mississippi until June 1, 2011; (4) order the defendant, the Desoto County, Mississippi Board of Supervisors, to promptly redistrict supervisor, justice court, and constable districts and obtain preclearance of such redistricting plans by May 1, 2011; or (5) shorten the terms of office and set aside any elections under the malapportioned scheme.


WHEREFORE, PREMISES CONSIDERED, plaintiffs request the Court to: (1) enjoin elections under the existing malapportioned scheme; (2) enjoin the present candidate qualification deadline for the office of supervisor, justice court judge, and constable in Desoto County, Mississippi;

(3) extend the candidate qualification deadline for the office of supervisor, justice court judge, and constable in Desoto County, Mississippi until June 1, 2011; (4) order the defendant, the Desoto County, Mississippi Board of Supervisors to promptly redistrict supervisor, justice court, and constable districts and obtain preclearance of such redistricting plans by May 1, 2011; or (5) shorten the terms of office and set aside any elections under the malapportioned scheme.

Since the authorities for this motion are contained herein, plaintiffs request leave of court from the requirement of filing a separate memorandum of authorities.

This the 28th day of February, 2011.

Respectfully submitted,
DESOTO COUNTY, MISSISSIPPI BRANCH
OF THE NAACP and THOMAS PLUNKETT, on behalf of
themselves and all others similarly situated



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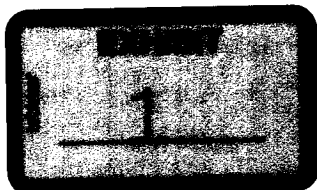
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DECLARATION OF THOMAS A. PLUNKETT

I, Thomas A. Plunkett, am an adult resident citizen of Supervisor District 4 in Desoto County, Mississippi, and I hereby make the following Declaration, pursuant to 28 U. S. C. § 1746:

1. My name is Thomas A. Plunkett, and I am an adult African American resident citizen and registered voter in Supervisor District 4 in Desoto County, Mississippi, and I am the President of the Desoto County Chapter of the National Association for the Advancement of Colored People.
2. I have personal knowledge of the facts and statements contained in this Declaration.
3. The population for Desoto County, Mississippi according to the 2010 federal decennial census is 161,252 persons of whom 35,266 (or 21.87%) are African-American. A copy of the 2010 federal census data for the county showing the total population for each supervisor district, the black population for each supervisor district, and the black population percentage for each supervisor district is attached hereto as Exhibit "A" and incorporated herein.
4. The county is governed by a five (5) member board of supervisors elected to four (4) year terms of office from single member districts.
5. The terms of office for current members of the board of supervisors expire December 31, 2011.
6. Political party primary nomination elections for the next term of office for members of the board of supervisors is scheduled for Tuesday, August 2, 2011.
7. The qualification deadline for candidates is March 1, 2011.
8. A majority vote is required for political party nomination elections in Mississippi.
9. Political party second primary nomination or run-off elections for the next term of office for members of the board of supervisors are scheduled for Tuesday, August 23, 2011 if no



candidate receives a majority vote during the primary nomination election.

10. A general election and regular special elections are scheduled for Tuesday, November 8, 2011.

11. The present supervisor districts for the county have a maximum deviation percentage 75.22 according to the 2010 census.

12. As a registered voter in Pescadore County, Mississippi, I feel aggrieved by the maximum deviation percentage.

12. The county has a long and official history of racial discrimination against African-American citizens and voters that has affect our right to register, vote, and participate in the political process.

13. There is racial bloc voting in elections for supervisor in the county.

5. All of the facts and statements contained in this Declaration are true and correct.

WITNESS MY SIGNATURE, this the 25th day of February, 2011.

Shannon J. Plunkett

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 25th day of February, 2011.

Shannon J. Plunkett

PREPARED BY:

s/Carroll Rhodes

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District	Total Pop	Black	% Black	Asian	% Asian	Hispanic	% Hisp	NHisp	White	VAP	Black	% VAP Black	VAP	Asian	% VAP Asian	% VAP Hispanic	VAP NHisp	White	% VAP NHisp	White	Deviation %
Covington	19568	6825								14481	4646										
1	4405	466	10.58	12	.27	79	1.79	3804	3310	317	9.58	10	.3	49	1.48	2918	88.16	12.54			
2	4054	228	5.62	7	.17	92	2.27	3688	3040	153	5.03	5	.16	51	1.68	2807	92.34	3.58			
3	3760	1832	48.72	2	.05	102	2.71	1808	2719	1192	43.84	2	.07	69	2.54	1452	53.4	-3.93			
4	3751	1920	51.19	16	.43	45	1.2	1756	2810	1341	47.72	6	.21	35	1.25	1415	50.36	-4.16			
5	3598	2379	66.12	6	.17	51	1.42	1146	2602	1643	63.14	5	.19	33	1.27	913	35.09	-8.07			
DeSoto	161252	35266								115627	23002										
1	44551	10331	23.14	615	1.38	1942	4.35	31222	31835	6843	21.5	443	1.39	1137	3.57	23195	72.86	38.45			
2	30691	5814	18.94	574	1.87	1342	4.37	22489	22156	3655	16.5	402	1.81	851	3.84	17002	76.74	-4.83			
3	27008	8614	31.89	274	1.01	2202	8.15	15405	18576	5331	28.7	222	1.2	1297	6.98	11501	61.91	-16.25			
4	20393	4225	20.72	159	.78	1462	7.17	14212	15049	2797	18.59	118	.78	905	6.01	11076	73.6	-36.77			
5	38509	6282	16.31	411	1.07	1138	2.96	30225	28011	4376	15.62	289	1.03	717	2.56	22399	79.97	19.41			
Forrest	74934	27082								57231	19152										
1	14368	4755	33.09	102	.71	390	2.71	8898	11222	3231	28.79	85	.76	296	2.64	7485	66.7	-4.13			
2	12655	7617	60.19	38	.3	548	4.33	4307	9602	5512	57.4	33	.34	361	3.76	3629	37.79	-15.56			
3	17789	1571	8.83	95	.53	450	2.53	15425	12964	1059	8.17	66	.51	258	1.99	11449	88.31	18.7			
4	14114	9107	64.52	38	.27	806	5.71	4035	10098	6141	60.81	36	.36	538	5.33	3312	32.8	-5.83			
5	16008	4032	25.19	225	1.41	443	2.77	11101	13345	3209	24.05	202	1.51	375	2.81	9419	70.58	6.81			
Franklin	8118	2791								6075	1948										
1	1566	959	61.24	0	0	2	.13	601	1091	639	58.57	0	0	2	.18	448	41.06	-3.57			
2	1654	483	29.2	0	0	10	.6	1146	1290	354	27.44	0	0	7	.54	918	71.16	1.85			
3	1674	945	56.45	2	.12	16	.96	698	1205	669	55.52	2	.17	12	1	518	42.99	3.08			
4	1646	261	15.86	1	.06	3	.18	1370	1267	182	14.36	1	.08	3	.24	1073	84.69	1.35			
5	1578	143	9.06	2	.13	16	1.01	1415	1222	104	8.51	2	.16	11	.9	1104	90.34	-2.83			
George	22578	1829								16518	1320										
1	4388	73	1.66	2	.05	103	2.35	4160	3188	52	1.63	2	.06	72	2.26	3022	94.79	-2.83			
2	5003	51	1.02	7	.14	123	2.46	4779	3642	37	1.02	4	.11	84	2.31	3488	95.77	10.78			
3	4739	450	9.5	16	.34	62	1.31	4153	3424	323	9.43	10	.29	36	1.05	3024	88.32	4.94			
4	4544	562	12.37	16	.35	98	2.16	3819	3428	439	12.81	10	.29	66	1.93	2881	84.04	.62			
5	3904	693	17.75	6	.15	67	1.72	3098	2836	469	16.54	5	.18	34	1.2	2305	81.28	-13.55			